

Stewart.mtn

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FILED
DISTRICT COURT OF GUAM

AUG - 9 2007 *mbo*

JEANNE G. QUINATA
Clerk of Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DARRELL S.C. STEWART,
Defendant.

CRIMINAL CASE NO. 07-00063

**UNITED STATES MOTION TO
DISMISS**

COMES NOW the United States of America, by and through undersigned counsel, and moves this Honorable Court for an order dismissing this indictment, based upon the declaration of counsel attached hereto.

RESPECTFULLY SUBMITTED this 9th day of August, 2007.

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY:

Karon V. Johnson
KARON V. JOHNSON
Assistant U.S. Attorney

DECLARATION

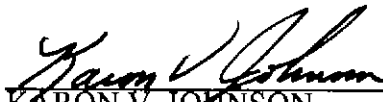
1 The initial appearance of defendant is set for Friday, August 10, 2007, at 1:15 p.m.
2 At that time the United States will move to dismiss the indictment because this case does not
3 comport with the "Petite Policy" which generally guides the charging decisions by the U.S.
4 Attorney's Office, as provided by USAM Section 9-2.031.

5 This case was brought to our office by DEA S/A Michelle Jong, who advised that it
6 concerned the delivery of a controlled substance by means of an automobile, and that this would
7 be a suitable case to take for forfeiture, though the amount of controlled substance was below
8 that which our office usually accepts. Accordingly, the DEA adopted the case and it was
9 presented to our office for prosecution; a "matter" file was opened on June 12, 2007.

10 On July 25, 2007, this case was presented to the grand jury, and an indictment
11 accordingly returned. Later the same day S/A Jong advised Connie San Nicolas of this office
12 that she had heard the case had also been charged by the Guam Attorney General as well. Some
13 days later, S/A Jong secured a copy of the plea agreement and order in CF 254-07, which reflects
14 that Stewart pled guilty and was sentenced on July 24, 2007. Although the plea agreement does
15 not set forth the operative facts, S/A Jong advises that it concerns the same delivery of controlled
16 substances as this indictment.

17 I telephoned Assistant Attorney General Dianne Corbett, who said she had been told by
18 S/A Jong that our office would be taking the case for the civil forfeiture, but she believed the
19 criminal prosecution would be handled by the Guam AG. There appears to have been a
20 misunderstanding, in that this office generally takes forfeitures as part of a criminal matter,
21 because we lack the technical expertise to conduct the sort of sophisticated financial
22 investigations which larger office do Stateside in pursuing purely civil forfeitures.

23 Section 9-2.031 of the U.S. Attorney's Manual provides that successive prosecutions are
24 ordinarily not pursued, unless there is some compelling federal reason. There is no such reason
25 here.

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KARON V. JOHNSON
Assistant U.S. Attorney